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EXAMINER

DODDS, HAROLD E

ART UNIT

PAPER NUMBER

2177

DATE MAILED: 12/24/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/583,886

Applicant(s)

GRANA, CLARE

Examiner

Harold E. Dodds, Jr.

Art Unit

2177

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 31 May 2000 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). ____
- 2) ☒ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____ 6) ☐ Other:

DETAILED ACTION

Drawings

1. The drawings are objected to because they fail to show necessary textual labels of features or symbols in Figs. 4-14 as described in the specification. For example, placing a title, "Overall Page", on Figure 4 with elements 102, 104, 106, 108, and 110 having the labels, "interview field," "today's menu field," "this week's menu field," "recipes field," and "restaurants field," respectively with the remaining elements of Fig. 4 appropriately labeled, would give the viewer necessary detail to fully understand this element at a glance. A *descriptive* textual label for *each numbered element* in these figures would be needed to fully and better understand these figures without substantial analysis of the detailed specification. Any structural detail that is of sufficient importance to be described should be shown in the drawing. Optionally, applicant may wish to include a table next to the present figure to fulfill this requirement. See 37 CFR 1.83. 37 CFR 1.84(n)(o) is recited below:

"(n) Symbols. Graphical drawing symbols may be used for conventional elements when appropriate. The elements for which such symbols and labeled representations are used must be adequately identified in the specification. Known devices should be illustrated by symbols which have a universally recognized conventional meaning and are generally accepted in the art. Other symbols which are not universally recognized may be used, subject to approval by the Office, if they are not likely to be confused with existing conventional symbols, and if they are readily identifiable.

(o) Legends. Suitable descriptive legends may be used, or may be required by the Examiner, where necessary for understanding of the drawing, subject to approval by the Office. They should contain as few words as possible."

Claim Rejections - 35 USC § 101

2. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

3. Claims 7 and 8 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

As disclosed in MPEP, claims to computer-related inventions that are clearly nonstatutory fall into the same general categories as nonstatutory claims in other arts, namely natural phenomena such as magnetism, and abstract ideas or laws of nature which constitute "descriptive material." Abstract ideas, Warmerdam, 33 F.3d at 1360, 31 USPQ2d at 1759, or the mere manipulation of abstract ideas, Schrader, 22 F.3d at 292-93, 30 USPQ2d at 1457-58, are not patentable. Descriptive material can be characterized as either "functional descriptive material" or "nonfunctional descriptive material." In this context, "functional descriptive material" consists of data structures and computer programs which impart functionality when employed as a computer component. (The definition of "data structure" is "a physical or logical relationship among data elements, designed to support specific data manipulation functions." The New IEEE Standard Dictionary of Electrical and Electronics Terms 308 (5th ed. 1993).) "Nonfunctional descriptive material" includes but is not limited to music, literary works and a compilation or mere arrangement of data. (MPEP 2106 (IV) (B) (1)).

In particular, the claimed subject matter of claims 7 and 8 is a data structure, but there is no inter-relationship description between fields listed.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1, 2, 4, and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Short (U.S. Patent No. 6,356,940), Kretsch et al. (U.S. Patent No. 5,233,520), Anderson et al. (U.S. Patent No. 5,974,396), and Brown (U.S. Patent No. 5,960,403).

6. Short rendered obvious independent claim 1 by the following:

"...storing dietary information on a database..." at col. 4, lines 45-50.

Short does not teach searching the database, meeting user criteria, manipulating the information to provide a table, and transmitting the information from the table.

7. However, Kretsch teaches searching the database to provide dietary information as follows:

"...searching the database to identify specific dietary information..." at col. 20, lines 22-26.

It would have been obvious to one of ordinary skill at the time of the invention to combine Kretsch with Short since both Short and Kretsch teach the use of databases, use of dietary information, the storing of data, and data analysis.

Kretsch does not teach meeting user criteria, manipulating the information to provide a table, and transmitting the information from the table.

8. However, Anderson teaches meeting user criteria and manipulating the information to provide a table as follows:

"...meeting user criteria..." at 12, lines 21-25.

"...manipulating the information to provide a table of information..." at col. 10, lines 26-32.

"...from said table of information..." at col. 10, lines 26-32.

"...accessible to the user from the database..." at col. 9, lines 3-5.

It would have been obvious to one of ordinary skill at the time of the invention to combine Anderson with Short and Kretsch since Short, Kretsch, and Anderson teach

the use of databases, use of dietary information, the storing of data, and data analysis, Short and Anderson teach the use of tables and the use of networks, and Kresch and Anderson teach the use of criteria.

Anderson does not teach transmitting dietary information.

9. However, Brown teaches transmitting dietary information as follows:

"...and transmitting specific dietary information..." at col. 12, lines 7-11, col. 17, lines 66-67, and col. 18, lines 1-4.

It would have been obvious to one of ordinary skill at the time of the invention to combine Brown with Short, Kretsch, and Anderson since Short, Kretsch, Anderson, and Brown teach the use of databases, use of dietary information, the storing of data, and data analysis and Short, Anderson, and Brown teach the use of networks.

10. As per claim 2, the "...transmitting...the dietary information..." is taught by Brown at col. 12, lines 7-11, col. 17, lines 66-67, and col. 18, lines 1-4 and the "...evaluations of the dietary information..." is taught by Short at col. 2, lines 13-21 and col. 2, lines 60-62.

11. As per independent claim 4, the "...a data network..." is taught by Short at col. 3, lines 56-65, the "...plurality of databases operably connected to said data network..." is taught by Short at col. 4, lines 1-11, the "...and a computer operably connected to said plurality of databases via said data network..." is taught by Short at col. 4, lines 1-11, the "...said computer having a storage area..." is taught by Kresch at col 7., lines 62-67,

the "...wherein said computer searches said plurality of databases..." is taught by Kretsch at col. 20, lines 22-26,

the "...to identify information relating to a plurality of factors as specified by a user of said computer..." is taught by Brown at col. 9, lines 40-47 and col. 19, lines 62-65,

the "...said databases transmit said identified information..." is taught by Brown at col. 3, lines 22-26, col. 12, lines 7-10, and col. 9, lines 40-47,

the "...to said storage area of said computer via said data network..." is taught by Brown at col. 9, lines 22-25 and col. 3, lines 22-26,

the "...and said computer manipulates said transmitted information..." is taught by Brown at col. 9, lines 52-60 and col. 12, lines 7-10,

and the "...to provide a summary of appropriate dietary information..." is taught by Anderson at col. 14, lines 23-25, col. 10, lines 66-67, and col. 11, lines 1-2.

12. As per claim 5, the "...said server computer transmits a location in said storage area..." is taught by Brown at col. 9, lines 9-14, col. 12, lines 7-11, col. 7, lines 47-50, and col. 9, lines 22-25,

and the "...containing said dietary information to said user computer..." is taught by Short at col. 2, lines 55-62.

13. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Short, Kretsch, Anderson, and Brown as applied to claim 1 above, and further in view of Shapira et al. (U.S. Patent No. 6,387,956).

As per claim 3, the "...evaluation of the interaction between the dietary information and medication information..." is not taught by either Short, Kretsch, Anderson, or Brown.

However, Shapira teaches the evaluation of the interaction between the dietary information and medication information as follows:

"...Patients were evaluated using the Yale-Brown Obsessive Compulsive Scale (Y-BOCS), the Hamilton Rating Scale for Depression (HAM-D) and the Clinical Global Impression Scale (CGI)..." at col. 8, lines 3-12.

"...Some OC spectrum disorders, such a bulimia nervosa, have been shown to respond to monoamine oxidase inhibitors (MAOIs). Unfortunately, people who use MAOIs adhere to numerous dietary restrictions and observe special precautions to avoid drug interactions..." at col. 3, lines 13-17.

It would have been obvious to one of ordinary skill at the time of the invention to combine Shapira with Short, Kretsch, Anderson, and Brown since Short, Kretsch, Anderson, Brown, and Shapira teach use of dietary information and the storing of data, Kretsch, Anderson, and Shapira teach the use of criteria, and Brown and Shapira teach the use of medication information.

14. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Short, Kretsch, Anderson, and Brown as applied to claim 4 above, and further in view of Moore et al. (U.S. Patent No. 5,930,759).

As per claim 6, the "...said storage area..." is taught by Brown at col. 9. lines 22-25,
but the "...comprises a personal data question template..." is not taught by either Short, Kretsch, Anderson, or Brown.

However, Moore teaches the use of personal data and the use of question templates as follows:

"...Also, printed copies of the personal data in the bar code, or of the bar code itself, may be made and placed on the patient's chart, to be used during treatment of the patient..." at col. 6, lines 30-33.

"...After all the questions on screen 112 have been completely answered, the operator enters a signal to confirm that this has been done; and then the claims assembling program shows screen 116, referred to as the Standard-Options-P2 screen..." at col. 14, lines 19-23.

It would have been obvious to one of ordinary skill at the time of the invention to combine Moore with Short, Kretsch, Anderson, and Brown since Short, Kretsch, Anderson, Brown, and Moore teach the use of databases and the storing of data, Short, Anderson, Brown, and Moore teach the use of networks Kretsch, Anderson, Brown, and Moore teach the use of storage areas, and Kretsch, Anderson, and Moore teach the use of files.

15. Claims 7-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Haudenschild et al. (U.S. patent No. 6,401,072), Mellinger (U.S. Patent No. 4,951,197), Schroeder (U.S. Patent No. 5,787,186), Umbdenstock (U.S. No. 5,332,579, Hankins (U.S. Patent No. 6,375,077), Goldman et al. (U.S. Patent No. 5,542,420), and Longabaugh (U.S. Patent No. 4,636,949).

16. Haudenschild rendered obvious independent claim 7 as follows:
"...a data structure stored in said computer-readable memory... at col. 6, lines 59-63.
"...said data structure including information used by said application program..." at col. 6, lines 59-63.

"...wherein said fields have values..." at col. 23, lines 25-27 and col. 18, lines 64-67.

"...and said application program..." at col. 6, lines 59-63.

"...based on the manipulation of said plurality of fields..." is taught by col. 28, lines 32-34.

"...by employing a nutritional and medication databases..." at col. 16, lines 11-21 and col. 10, lines 25-28.

Haudenschild does not teach the determination of menu plans, the use of personal data, the use of anthropometrics, the use of special metabolic needs data, the use of food preferences data, the use of health status data, the use of food allergies data, the use of life stage data, the use of dietary prescription data, and the use of cooking complexity data.

18. However, Mellinger teaches the determining of diet plans as follows:

"...determines a menu plan..." at col. 9, lines 27-29 and col. 9, lines 61-64.

It would have been obvious to one of ordinary skill at the time of the invention to combine Mellinger with Haudenschild since both Haudenschild and Mellinger teach the use of values, the use of plans, the use of menus, the use of dietary information, the the use of nutrients, and the use of medical information.

Mellinger does not teach the use of personal data, the use of anthropometrics, the use of special metabolic needs data, the use of food preferences data, the use of health status data, the use of food allergies data, the use of life stage data, the use of dietary prescription data, and the use of cooking complexity data.

19. However, Schroeder teaches the use of personal data and anthropometrics as follows:

"...a plurality of personal data fields..." at col. 4, lines 37-39.

"...a plurality of anthropometrics fields..." at col. 8, lines 45-51.

It would have been obvious to one of ordinary skill at the time of the invention to combine Schroeder with Haudenschild and Mellinger since Haudenschild, Mellinger, and Schroeder teach the use of values and Haudenschild and Schroeder teach the use of databases.

Schroeder does not teach the use of special metabolic needs data, the use of food preferences data, the use of health status data, the use of food allergies data, the use of life stage data, the use of dietary prescription data, and the use of cooking complexity data.

20. However, Umbdenstock teaches the use of special metabolic needs as follows:

"...a plurality of special metabolic needs fields..." at col. 8, lines 34-38 and col. 5, lines 25-29.

It would have been obvious to one of ordinary skill at the time of the invention to combine Umbdenstock with Haudenschild, Mellinger, and Schroeder since Haudenschild, Mellinger, and Umbdenstock teach the use of dietary entities, medical terms, and nutrients, Haudenschild and Umbdenstock teach the use of diagnosos, the use of treatments, and the use of medications, and Mellinger and Umbdenstock teach the use of food.

Umbdenstock does not teach the use of food preferences data, the use of health status data, the use of food allergies data, the use of life stage data, the use of dietary prescription data, and the use of cooking complexity data.

21. However, Hankins teaches the use of food preferences and the use of food allergies as follows:

“...a plurality of food preferences fields...” at col. 4, lines 62-63.

“...a plurality of food allergies fields...” at col. 8, lines 40-44.

It would have been obvious to one of ordinary skill at the time of the invention to combine Hankins with Haudenschild, Mellinger, Schroeder, and Umbdenstock since Haudenschild, Mellinger, Schroeder, and Hankins teach the use of values, Haudenschild, Mellinger, Umbdenstock, and Hankins teach the use of dietary entities, medical terms, and nutrients, Haudenschild, Mellinger, and Hankins teach the use of plans, Haudenschild, Schroeder, and Hankins teach the use of databases, and Mellinger, Umbdenstock, and Hankins teach the use of food.

Hankins does not teach the use of health status data, the use of life stage data, the use of dietary prescription data, and the use of cooking complexity data.

22. However, Goldman teaches the use of health status data and dietary prescriptions as follows:

“...a plurality of health status fields...” at col. 11, lines 6-10.

“...a plurality of dietary prescription fields...” at col. 14, lines 9-13.

It would have been obvious to one of ordinary skill at the time of the invention to combine Goldman with Haudenschild, Mellinger, Schroeder, Umbdenstock, and

Hankins since Haudenschild, Mellinger, Umbdenstock, Hankins, and Goldman teach the use of dietary entities and medical terms, Haudenschild, Schroeder, Hankins, and Goldman teach the use of databases, Mellinger, Umbdenstock, Hankins, and Goldman teach the use of food, Haudenschild, Mellinger, and Goldman teach the use of menus, Haudenschild, Umbdenstock, and Goldman teach the use of treatments and the use of medications, Haudenschild, Hankins, and Goldman teach the use of fields, Schroeder, Hankins, and Goldman teach the use of personal data, and Umbdenstock, Hankins, and Goldman teach the use of specific needs.

Goldman does not teach the use of life stage data and the use of cooking complexity data.

23. However, Longabaugh teaches the use of life stage data and the use of cooking complexity data as follows:

“...a plurality of life stage fields...” at col. 4, lines 33-36.

“...a plurality of cooking complexity fields...” at col. 2, lines 20-28.

It would have been obvious to one of ordinary skill at the time of the invention to combine Longabaugh with Haudenschild, Mellinger, Schroeder, Umbdenstock, Hankins, and Goldman since Haudenschild, Mellinger, Hankins, Goldman, and Longabaugh teach the use of values, Mellinger, Umbdenstock, Hankins, Goldman, and Longabaugh teach the use of food, and Haudenschild, Umbdenstock, and Longabaugh teach the use diagnosis.

24. As per claim 8, the “...plurality of personal data question fields...” is taught by Hankins at col. 11, lines 62-65 and col. 7, lines 6-9.

35. As per claim 9, the "...plurality of evaluation fields to permit evaluation of said application program..." is taught by Haudenshede at col. 20, lines 47-50 and col. 6, lines 59-63.

36. As per claim 10, the "...address field for sending the user an address location of said dietary information fields..." is taught by Hankins at col. 11, lines 62-65, col. 2, lines 29-40, col. 5, lines 10-16, and col. 5, lines 53-51.

Conclusion

37. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Harold E. Dodds, Jr. whose telephone number is (703)-305-1802. The examiner can normally be reached on Monday - Friday 8:00 - 4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John E. Breene can be reached on (703)-305-9790. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 746-7239 for regular communications and 703-746-7238 for After Final communications.


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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)-305-3900.

Harold E. Dodds, Jr.

Harold E. Dodds, Jr.
Patent Examiner
December 20, 2002


GRETA ROBINSON
PRIMARY EXAMINER